IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1080 of 2002
in
SPECIAL CIVIL APPLICATIONNo 4280 of 2001

with

LETTERS PATENT APPEAL No 1159 of 2004

with

LETTERS PATENT APPEAL No 1160 of 2004

with

LETTERS PATENT APPEAL No 1161 of 2004

with

LETTERS PATENT APPEAL No 1162 of 2004
with
CIVIL APPLICATION NO.4033/2004 in LPA No.1159/2004
with
CIVIL APPLICATION NO.4034/2004 in LPA No.1160/2004
with
CIVIL APPLICATION NO.4035/2004 in LPA No.1161/2004
with
CIVIL APPLICATION NO.4036/2004 in LPA No.1162/2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SAROJBEN WD/O MANGALBHAI SOMABHAI VAGHRI

Versus

RAMJI MANDIR TRUST

Appearance:

1. LETTERS PATENT APPEAL No. 1080 of 2002
   MR MURALI N DEVNANI for Appellant No.
   ..... for Respondent No. 1
   MR YATIN SONI for Respondent No. 1/1
   RULE SERVED for Respondent No. 1/1-1/3,2-3-1/3
2. LETTERS PATENT APPEAL No. 1080 of 2002
   MR MURALI N DEVNANI for Appellant No.
   ..... for Respondent No. 1
   MR YATIN SONI for Respondent No. 1/1
   RULE SERVED for Respondent No. 1/1-1/3,2-3-1/3
3. LETTERS PATENT APPEAL No. 1159 to 1162 of 2004
   MR MURALI N DEVNANI for Appellant No.
   ..... for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.A.MEHTA

Date of decision: 29/07/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

These appeals are directed against common judgment and order dated 4th October, 2001 of the learned Single Judge allowing Special Civil Application Nos.4280 to 4294 of 2001, by which, the learned Single Judge quashed and set aside the common order dated 25th January, 2001 and another order dated 19th March, 2001 passed by the Deputy Collector, Nadiad under Section 23-A of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 [for short "Bombay Rent Act"] permitting the appellants to get electricity supply in the premises occupied by the appellants and belonging to

the respondents.

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#. The facts leading to filing of these appeals are as under :

2.1 The appellants made applications before the Collector under Section 23-A of the Bombay Rent Act stating that the appellants are tenants and occupants of the properties situated at Dakor, Taluka Thasara being Municipal properties Nos.596, 591, 600, 589, 600/2, 594, 599, 593, 592, 598, 597/1 and 509. The appellants are residing in the above premises for the last more than 60 years. According to the appellants, the respondents Nos.1 to 3 contended before the Collector that the respondents have not permitted the appellants to take the essential services like electricity supply, though demanded several times and though the appellants are desirous of obtaining such electric connection from respondent Gujarat Electricity Board [for short "G.E.B."] at their own costs individually. However, only on the ground that the respondents were not giving consent required from the owners of the premises under the Indian Electricity Act, the appellants were not getting electricity supply. By the aforesaid orders dated 25th January and 19th March, 2001, the Deputy Collector, Nadiad granted the applications and permitted the appellants to obtain electric supply from the G.E.B. at their own costs and directed the G.E.B. to provide electricity connection in the land bearing Survey No.201 and 203 of Nani Bhagol, Dakor in the above numbered premises by proceeding on the deemed permission of the owners as provided in Section 23-A of the Bombay Rent Act.

2.2 Aggrieved by the said order, the respondents herein filed Civil Revision Application No.16 of 2001 which came to be dismissed by the learned Asst. Judge, Kheda.

2.3 The respondents, therefore, filed Special Civil Application No.4280 of 2001 along with cognate matters before this Court, which came to be allowed by the learned Single Judge by the judgment under challenge whereby the learned Single Judge has set aside the orders of the Deputy Collector as confirmed by the learned Asst.

Judge on the ground that there was nothing on record to show that there was prima facie case to show that the appellants herein are tenants of the suit land in dispute and if they are trespassers, they cannot obtain electricity connection. It is also observed by the learned Single Judge that in case, the respondents [appellants herein] are not in lawful possession and if suit is pending centering around the dispute, the occupants cannot get benefit under Section 23-A of the Act. It is the said judgment which is challenged before us in these Letters Patent Appeals.

#. Mr.Murali Devnani, learned counsel for the appellants has submitted that when the appellants had gone with the specific case before the Deputy Collector under Section 23-A of the Bombay Rent Act that the appellants are tenants of the respective premises and the Deputy Collector as well as the learned Asst. Judge have accepted the appellants' case, the learned Single Judge ought not to have interfered with concurrent orders passed by the authority and the Court below, when the said orders did not suffer from any jurisdictional error whatsoever. Strong reliance is placed on the decision of this Court in CHAMAR RAMJIBHAI KHIMABHAI V. MIRZA MURMAHMMADBHAI AMIRBHAI AND ANOTHER, 2000 [3] GLR 2658 laying down that for granting application under Section 23-A of the Bombay Rent Act, what the Collector is required to see is not whether the applicant has satisfactorily established that he is a tenant, but whether the applicant has prima facie established that he is a tenant.

Mr.Devnani has further submitted that even the respondents' case is that the appellants or their ancestors in their capacity as employees were lawfully inducted into the property in question and therefore, there was all the more reason for the learned Single Judge not to interfere with the concurrent orders passed by the authority and the Court below, since the Bombay Rent Act does not recognise the concept of service tenants. It is further submitted that the respondents had filed Civil Suits for evicting the appellants from the premises in question on the ground that the appellants were licensees and respondents had terminated licence, those suits were filed in 1979 but the respondents allowed the said suits to be dismissed for default in the year 1985; the respondents did not take any further steps / proceedings thereafter but only after the appellants made applications before the Deputy Collector under Section 23-A of the Bombay Rent Act that

the respondents filed fresh Civil Suits for evicting appellants from the premises in question.

#. On the other hand, Mr.Yatin Soni, learned counsel for the respondents has submitted that the Deputy Collector would get jurisdiction to exercise the powers under Section 23-A of the Rent Act only when it is shown that the applicant is a tenant. Neither the Deputy Collector or the learned Asst. Judge has given any such finding, nor is such finding given by any competent Court of law. Hence, the learned Single Judge was justified in setting aside the orders of the Deputy Collector and the learned Asst. Judge in favour of the appellants under Section 23-A of the Bombay Rent Act. It is further submitted that premises in question are agricultural lands and, therefore, the provisions of Bombay Rent Act are not applicable in view of the definition of the "premises" under Section 5[8] of the Act.

#. Having heard the learned counsel for the parties, we are of the view that when the Deputy Collector as well as the learned Asst. Judge had given concurrent finding of fact that the appellants had prima facie shown that they are tenants of the premises in question, there was no warrant for setting aside the said finding in a petition under Article 226 of the Constitution of India. The fact that even according to the respondents, the appellants or their ancestors were permitted to occupy the property in question as employees on licence basis and the respondents permitted the Civil Suits filed by them in 1979 to be dismissed for default in the year 1985, and thereafter, no other and further proceedings were taken out to evict the appellants till the appellants filed applications under Section 23-A of the Bombay Rent Act for getting electricity supply and the fact that the names of the appellants are entered in the Municipal Assessment Register of the Dakor Municipality within limits of which the properties are situate, are telltale circumstances which justify the finding given by the Deputy Collector and confirmed by the learned Extra Asst. Judge that prima facie the appellants are tenants of the properties in question.

#. Under the provisions of the Indian Electricity Act, 1910, the licensee [G.E.B. in the present case] would not be permitted to enter any private premises for laying electric cable and for installing any electric meter without the consent of the owner of the premises. By

withholding his consent, the owner of the premises would be in a position to prevent the tenant from getting electricity supply. Section 23-A of the Bombay Rent Act, therefore, provides a speedy and inexpensive remedy to the tenant to get electricity supply notwithstanding that the owner of the premises is not agreeable to such essential service being provided to the tenant. If on the landlords' raising the dispute that the occupant of the premises is not a tenant, such occupant were driven to instituting judicial proceedings for a declaration that he is a tenant, such proceedings would take years, if not decades. and this situation would frustrate the very object of insertion of Section 23-A in the Bombay Rent Act. Hence, taking into consideration the underlying object of Section-23-A of the Bombay Rent Act, it has to be held that for the proceedings under Section 23-A of the Bombay Rent Act, the Collector is not required to hold a detailed enquiry and come to conclusive finding that the applicant is a tenant, but the Collector is required to hold only a summary enquiry for the purpose of giving prima facie finding that the applicant is a tenant. It is for this reason that in CHAMAR RAMJIBHAI KHIMABHAI V. MIRZA MURMAHMMADBHAI AMIRBHAI AND ANOTHER, 2000 [3] GLR 2658, this Court held that for granting application under Section 23-A of the Bombay Rent Act, what the Collector is required to see is not whether the applicant has satisfactorily established that he is a tenant, but whether the applicant has prima facie established that he is a tenant.

#. In the facts of the present case, the Deputy Collector did hold such a summary enquiry and on the basis of the material on record before him, came to the conclusion that the appellants had prima facie shown that they are tenants of the properties in question and this finding is confirmed by the learned Extra Asst. Judge. In our opinion, the appellants were rightly granted remedy under Section 23-A and therefore, there was no justification to set aside the order of the authority under Section 23-A of the Bombay Rent Act as confirmed by the learned Extra Asst. Judge.

#. As regards the contention raised by the learned counsel Mr.Soni for the respondent that the premises are agricultural lands and therefore, Bombay Rent Act would not apply, in the first place, such contention was not raised before the learned Single Judge and therefore, the respondents would not be entitled to raise such contention in appeal. However, in view of the fact that the learned Single Judge has allowed the petition and set aside the orders of the authority / lower Court, learned

counsel has sought to support the judgment of the learned Single Judge by urging the ground which was raised before the learned Extra Asst. Judge in revision.

#. Mr.Murali Devnani, learned counsel for the appellants has submitted that the land in question is within the municipal limits of the Dakor Municipality and also a part of the Town Planning Scheme. Hence, it is not an agricultural land.

##. Section 5[8] of the Bombay Rent Act defines the word "premises" as under :

"[8] "Premiss" means :

[a] any land not being used for agricultural purpose.

[b] any building or part of a building let separately [other than a farm building] including-

##. In our view, the question, whether the land in question is an agricultural land is a question of fact. Apart from the fact that the land in question is undoubtedly within the limits of the Dakor Municipality, the property in question is also entered in the Municipal Assessment Register of Dakor Municipality. Prima facie, therefore, it is not possible to accept Mr.Soni's contention for the respondents.

##. As regards reliance placed by Mr.Soni on the decision of the Apex Cout in Mst.SUBHADRA V. NARSAJI, AIR 1966 SC 806, in that case the open land in question was assessed to agricultural assessment and the Court held that the relevant date for deciding whether the land in question is "premises" within the meaning of Section 5[8] of the Bombay Rent Act is the date on which the land was let out and not the date on which the application for fixation of standard rent is made by the tenant or the landlord.

Since there is no material on record to show that the land in question is assessed to agricultural assessment and in view of the admitted fact that the land in question is shown in the municipal assessment register of the Dakor Municipality, we do not find any substance

in the second contention raised by Mr.Soni for the respondents.

##. It is clarified that the findings recorded in this judgment are in the context of the appellants' applications under Section 23-A of the Bombay Rent Act and the concerned Court before which the disputes between the parties are pending in respect of the other issues, shall decide the same in accordance with law.

It is also clarified that the direction given by the Deputy Collector to the respondent G.E.B. for supply of electricity to the appellants under Section 23-A of the Bombay Rent Act, is obviously to be carried out in accordance with the relevant statutory provisions including the rules, regulations and circulars framed by the respondent G.E.B. for supply of electricity.

##. In view of the above discussion, all these appeals are allowed. We set aside the judgment and order dated 4.10.2001 of the learned Single Judge in Special Civil Application Nos.4280 to 4294 of 2001 and restore the orders dated 25th January, 2001 and 19th March, 2001 made by the Deputy Collector, Nadiad as confirmed by the learned Extra Asst. Judge, Nadiad in Civil Revision Application dated 21st May, 2001.

##. Since the appeals are allowed, civil applications do not survive and the same stand disposed of accordingly with no order as to costs.

[M.S.Shah, J.]

Date : 29.7.2004 [D.A.Mehta, J.]

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